

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

75
74-7017

B

United States Court of Appeals

For the Second Circuit.

AACON AUTO TRANSPORT, INC.,

Plaintiff-Appellant,

vs.

JOHN BRUIN, d/b/a INTERSTATE AUTO DELIVERY
and INTERSTATE AUTO DELIVERY, INC.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Appendix

ZOLA and ZOLA

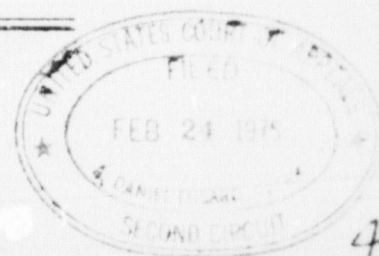
Attorneys for Plaintiff-Appellant

228 West 41st Street

New York, N.Y. 10036

(212) 534-1444

DICK BAILEY PRINTERS - (212) 447-5358



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PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

<u>Item</u>	<u>Page</u>
ORDER APPEALED FROM, SIGNED NOVEMBER 25, 1974 BY HON. DUDLEY B. BONSAI, DENYING PRELIMINARY INJUNCTION AND DIRECTING CHANGE OF VENUE	1
NOTICE OF APPEAL	3
ORDER OF TRANSMITTAL OF RECORD ON APPEAL, SIGNED JANUARY 9, 1974 BY HON. DUDLEY B. BONSAI, TOGETHER WITH AFFIDAVIT OF MICHAEL G. AMES, ESQ. APPLYING FOR SAID ORDER	4
ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION, DATED SEPTEMBER 19, 1974	8
AFFIDAVIT OF RALPH J. ZOIA, ESQ., SWORN TO SEPTEMBER 9, 1974, IN SUPPORT OF SAID ORDER TO SHOW CAUSE TOGETHER WITH EXHIBITS, INCLUDING (a) BILLS OF LADING, (b) VERIFIED COMPLAINT AND (c) AGENCY AGREEMENT BETWEEN THE PARTIES	10
AFFIDAVIT OF RALPH J. ZOIA, ESQ., SWORN TO OCTOBER 16, 1974	33
AFFIDAVIT OF HARVEY BLACKMAN, SWORN TO OCTOBER 22, 1974	39
AFFIDAVIT OF ALLAN HERMAN, SWORN TO OCTOBER 16, 1974 TOGETHER WITH EXHIBITS	43
CROSS-MOTION TO DISMISS AND FOR CHANGE OF VENUE, DATED OCTOBER 4, 1974	49
AFFIDAVIT OF JOHN BRUIN, SWORN TO OCTOBER 4, 1974	51
TRANSCRIPT OF HEARING ON MOTION BEFORE HON. DUDLEY B. BONSAI ON NOVEMBER 11, 1974	53

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
AAACON AUTO TRANSPORT, INC.,

Plaintiff;

74 Civ. 4084-DBB

-and-

ORDER FOR CHANGE OF
VENUE AND DENYING
PRELIMINARY INJUNCTION

JOHN BRUIN d/b/a/ INTERSTATE AUTO
DELIVERY, INC., etc.,

Defendants.
-----x

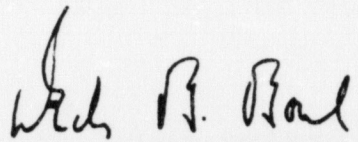
These matters came on for hearing on November 11, 1974 before the Honorable Dudley B. Bonsal, United States District Judge. Appearing for the plaintiff, AAACON AUTO TRANSPORT, INC., was Michael Ames, Esq., and appearing for the defendant, JOHN BRUIN, was Christopher Ashworth, Esq. The documents submitted to the Court for consideration were the plaintiff's Order to Show Cause for preliminary injunction signed by Honorable Dudley B. Bonsal, together with supporting papers annexed thereto; defendant's motion, dated October 16, 1974, to dismiss and to transfer the action to California, together with supporting documents; affidavit of Ralph J. Zola, sworn to October 16, 1974; affidavit of Harvey Blackman, sworn to October 22, 1974; affidavit of Allan Herman, sworn to October 16, 1974, and memoranda of law submitted by both sides. Oral argument was heard and the Court being fully advised in the premises, the motion of defendant John Bruin for transfer pursuant to 28 USC, Sec. 1404 (a) is granted; and upon the Order to Show Cause issued in this case, the preliminary injunction sought by the plaintiff Aaacon Auto Transport, Inc., as denied, and

IT IS HEREBY ORDERED that this action be transferred to the United States District Court for the Central District of

California;

IT IS FURTHER ORDERED that the petition for a preliminary injunction prayed for by the plaintiff is denied without prejudice to repetition for a preliminary injunction in the Central District of California.

Dated: NOVEMBER 25, 1974
AT NEW YORK, N.Y.



Dudley B. Bonsal
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
In the Matter of the Arbitration
of Certain Differences Between

AAACON AUTO TRANSPORT, INC.,

Plaintiff,

-and-

JOHN BRUIN, d/b/a/ INTERSTATE
AUTO DELIVERY and INTERSTATE
AUTO DELIVERY, INC.,

Defendants.
-----x

74-Civ. 4084-DBB

NOTICE OF APPEAL

SIRS:

PLEASE TAKE NOTICE that plaintiff, Aaacon Auto Transport, Inc., hereby appeals to the United States Court of Appeals for the Second Circuit from the order of Honorable Dudley B. Ponsal dated November 25, 1974 and filed November 26, 1974 in entirety and from each and every part of said order.

Yours,,etc.

Dated: New York, New York
December 23, 1974

TO: RUSSELL & SCHUREMAN, ESQS.
Attorneys for Defendant
1545 Wilshire Boulevard
Los Angeles, California 90017

ZOLA and ZOLA
Attorneys for Plaintiff
228 West 41st Street
New York, New York 10036
Tel. (212) 354-1444

CLERK,
U.S. District Court
United States Courthouse
101 South Street
New York, New York 10007

By Michael G. Ames
A member of the firm

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

x

AAACON AUTO TRANSPORT, INC.,

Plaintiff,

-and-

74 Civ. 4084-DBB

JOHN BRUIN, d/b/a INTERSTATE
AUTO DELIVERY and INTERSTATE
AUTO DELIVERY, INC.,

ORDER

Defendants.

x

Upon the annexed affidavit of Michael G. Ames, Esq., sworn to December 30, 1974, and the exhibits annexed thereto, upon the annexed Order of Honorable Dudley B. Bonsal, dated November 25, 1974, and upon the annexed Notice of Appeal, dated December 23, 1974, it is

ORDERED, that the Clerk of this Court is authorized and directed to transmit the annexed exhibits as the Record on Appeal to the United States Court of Appeals for the Second Circuit in lieu of the original documents which are no longer in the custody of the Clerk of this Court.

Dated: New York, New York
January 9, 1975

/s/ DUDLEY B. BONSALE
Dudley B. Bonsal
U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

x

AAACON AUTO TRANSPORT, INC.,

Plaintiff,

74 Civ. 4084-DBB

-and-

JOHN BRUIN, d/b/a INTERSTATE
AUTO DELIVERY and INTERSTATE
AUTO DELIVERY, INC.,

AFFIDAVIT

Defendants.

x

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

MICHAEL G. AMES, being duly sworn, deposes and says:

1. I am a member of the firm of Zola and Zola, Esqs., attorneys for plaintiff Aaacon Auto Transport, Inc. ("Aaacon") herein. I am fully familiar with all aspects of this matter.

2. This affidavit and annexed exhibits are submitted in support of this ex parte application for an order authorizing and directing the Clerk of this Court to transmit said exhibits as the Record on Appeal to the United States Court of Appeals for the Second Circuit in lieu of the original record, because of the reasons hereinafter set forth.

3. By order dated November 25, 1974, Honorable Dudley B. Bonsal, a Judge of this Court, transferred this action to the United States District Court for the Central District of California. A copy of said Order is annexed hereto.

4. On December 23, 1974, Aaacon's attorneys filed with the Clerk of this Court a Notice of Appeal from said Order of Judge Bonsal. A copy of said Notice of Appeal is annexed hereto.

5. The Appeals Clerk of this Court cannot transmit the Record on Appeal to the United States Court of Appeals for the Second Circuit since, pursuant to Judge Bonsal's Order, all papers in this case have been transferred to the aforementioned California Federal court.

6. I hereby swear under oath that annexed hereto are true copies from our files of all of the original documents submitted on this motion to Judge Bonsal.

a. Aaacon's order to show cause for a preliminary injunction signed by Honorable Dudley B. Bonsal, together with supporting papers annexed thereto.

b. Defendant John Bruin's motion dated October 4, 1974 to dismiss and to transfer the action to California, together with supporting documents.

c. Affidavit of Ralph J. Zola, sworn to October 16, 1974.

d. Affidavit of Harvey Blackman, sworn to October 22, 1974.

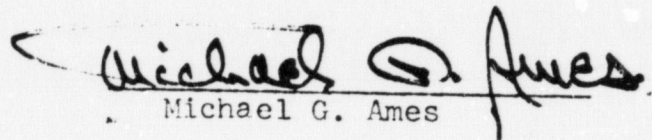
e. Affidavit of Alan Herman, sworn to October 16, 1974.

7. Copies of all documents referred to in the immediately preceding paragraph are annexed hereto.

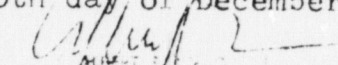
8. In view of the fact that the original papers submitted on this motion have been transferred to a California Federal Court by order of Judge Bonsal, we respectfully request this Court to sign the annexed order authorizing and directing the Clerk of this Court to transmit the annexed exhibits to the

United States Court of Appeals for the Second Circuit for the
Record on Appeal in lieu of the original record.

WHEREFORE, your deponent respectfully requests
Honorable Dudley B. Bonsal to sign the annexed order for the
reasons stated supra.


Michael G. Ames

Sworn to before me this
30th day of December 1974


Notary Public, State of New York
No. 41-4507104
Qualified in Dutchess County
Commission Expires March 31, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
AAACON AUTO TRANSPORT, INC.,

Plaintiff,

-against-

JOHN BRUIN d/b/a/ INTERSTATE AUTO
DELIVERY and INTERSTATE AUTO
DELIVERY, INC.,

Defendants.
-----x

CIVIL ACTION NO. 74 CIV

4084-DDQ

ORDER TO SHOW CAUSE FOR
PRELIMINARY INJUNCTION

Upon reading and filing the plaintiff's verified complaint in this action and the affidavit of Ralph J. Zola, sworn to on the 9th day of September, 1974, in support of plaintiff's Motion for a Preliminary Injunction, pursuant to Rule 65 of the Federal Rules of Civil Procedure,

NOW, THEREFORE, IT IS.

ORDERED, that the defendant, John Bruin, appear before this Court, in Room 706 of the United States Courthouse, Foley Square, in the City, County and State of New York at 9:30 o'clock in the ~~even~~ noon, on the 30th day of September 1974, then and there to show cause, if any it has, why defendant, his agents, servants, employees and representative, should not be enjoined and restrained pursuant to Rule 65 Federal Rules of Civil Procedure during the pendency of this action, from transporting in driveaway service in interstate commerce automobiles in violation of the agreement between the parties.

ORDERED, that copies of this Order, the verified complaint, the affidavit in support of the motion for a preliminary

injunction, be served upon the defendants by certified mail,
return receipt requested not later than the 20th day of September
1974.

Dated: New York, New York

September 19, 1974
B.P.M.

(s) DUDLEY B. BONSAZ
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AAACON AUTO TRANSPORT, INC.,

Plaintiff,

AFFIDAVIT

-against-

JOHN BRUIN d/b/a INTERSTATE AUTO DELIVERY
and INTERSTATE AUTO DELIVERY, INC.,

Defendants.

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

RALPH J. ZOLA, being duly sworn, deposes and says:

1. I am Executive Vice President of Aaacon Auto Transport, Inc. (hereinafter "Aaacon"), the plaintiff in the above-entitled cause of action.

2. Plaintiff is authorized by the Interstate Commerce Commission to transport automobiles in secondary movements in driveway service between various points in the United States, pursuant to authority MC-125808.

3. On or about December 26, 1973 defendant John Bruin came to plaintiff's New York office at 230 West 41st Street, New York City, and in order to induce plaintiff to enter into an agreement with him, represented that defendant Bruin's prior operations for Nationwide Auto Transporters, Inc. ("Nationwide"), a competitor of plaintiff, were within the scope of the authority of Nationwide, and that the defendants John Bruin and Interstate Auto Delivery, Inc. ("Interstate") had at all times complied with the requirements of the agreement between themselves and Nationwide; that the defendants John Bruin and Interstate had at all times transported vehicles in interstate commerce solely on the bills of

lading of Nationwide within the scope of the authority of Nationwide. Defendant John Bruin further represented to Aaacon that he would at all times in the future operate within the authority of Aaacon and solely transport automobiles in interstate commerce on bills of lading issued by Aaacon.

4. Defendant John Bruin knowingly and willfully made these representations, which he knew to be false, in order to induce Aaacon to enter into an agreement with defendant Bruin, to authorize him to transport vehicles on behalf of Aaacon.

5. Plaintiff Aaacon relied on the aforementioned representations of defendant Bruin and entered into an agreement with him in New York to its detriment. A copy of said agreement is annexed to the^{Complaint}/as Exhibit "A".

6. Upon information and belief, defendants Bruin and Interstate, in concert with others, had transported vehicles while an agent of Nationwide, other than in accord with the authority of Nationwide granted by the Interstate Commerce Commission and other than solely on the bills of lading of Nationwide.

7. Upon information and belief, after December 26, 1973 defendants Bruin and Interstate and others, acting in concert with them, continued this pattern of illegal transportation in violation of the agreement between defendant Bruin and plaintiff Aaacon, and without issuing Aaacon's bills of lading therefor, without accounting to Aaacon therefor and without authority from the Interstate Commerce Commission.

8. Upon information and belief, defendants Bruin and Interstate, in concert with others, have systematically and continuously transported vehicles in interstate commerce without authority from the Commission. Annexed hereto as Exhibits A through E are documents of transportation in interstate commerce

made by defendants John Bruin and Interstate.

9. No monies were accounted to plaintiff by defendant for those transportations in interstate commerce for which defendants did not issue plaintiff's bills of lading in violation of the agreement between the parties and the provisions of the Interstate Commerce Act.

10. Plaintiff is being systematically and irreparably harmed by the defendants' unlawful operation and breach of the contract between the parties.

11. No other adequate remedy is available to plaintiff and no prior application for the relief requested herein has been made.

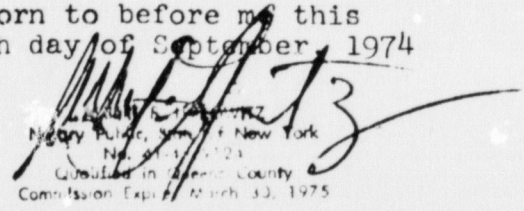
12. Plaintiff moves by order to show cause rather than notice of motion because of the irreparable harm caused plaintiff by defendant's continuing violation.

13. The parties have agreed to service of process anywhere in the United States by certified mail.

WHEREFORE, on behalf of the plaintiff Aaacon Auto Transport, Inc., I respectfully request that this Court issue a preliminary injunction enjoining and restraining the defendant from transporting vehicles in interstate commerce in violation of the agreement between the parties and without authority from the Interstate Commerce Commission.


Ralph S. Zola

Sworn to before me this
9th day of September, 1974


Gregory P. Zola, New York
Notary Public
Qualified in Queens County
Commission Expires March 30, 1975

DATE 7/29/74 INTERSTATE AUTO DELIVERY
CARRIER INVOICE NO. _____ INVOICE TO
SHIPPER ORIGIN

CONSIGNEE

JOE ROMANIA CHEV.
2028 FRANKLIN
EUGENE, OREGON

MIKE BALDWIN
2400 PRINCETON AVE
SACRAMENTO, CA.
916/929-0311

1ST NAT. BANK OF OREGON

DESCRIPTION OF VEHICLE
Year 72 Make CHEV Model LUV PU Serial/Engine LUV8219037 License AGJ 374

Registered Owner ROBIN RANFT Customer Ref. _____
Due Date _____ Lien _____ General Condition _____

Check (P) extra ☐ Radio ☐ Power brakes ☐ Power windows ☐ Air conditioning ☐ 3 speed trans. ☐ Stereo
Equipment ☐ Heater ☐ Power steering ☐ Power seats ☐ Automatic trans. ☐ 4 speed trans. ☐ Mag. wheels

CONDITION REPORT: ☒ GOOD ☐ FAIR ☐ MISSING ☐ SCRATCH ☐ DENTED ☐ PITTED ☐ CRACKED

	G	S	D	P	GLASS	G	P	C	BRKN		G	F	X
R. F. FENDER	<input checked="" type="checkbox"/>									WINDSHIELD			
GRILL	<input checked="" type="checkbox"/>									R. F. VENT			
F. BUMPER	<input checked="" type="checkbox"/>									R. P. DOOR			
HOOD	<input checked="" type="checkbox"/>									R. R. DOOR			
L. F. FENDER	<input checked="" type="checkbox"/>									REAR			
L. F. DOOR	<input checked="" type="checkbox"/>									L. R. DOOR			
L. BODY SILL	<input checked="" type="checkbox"/>									L. F. DOOR			
L. R. DOOR	<input checked="" type="checkbox"/>									L. F. VENT			
L. R. QTR. PANEL	<input checked="" type="checkbox"/>									ENGINE	<input checked="" type="checkbox"/>	G	F
DECK LID	<input checked="" type="checkbox"/>									TRANSMISSION			POOR
R. BUMPER	<input checked="" type="checkbox"/>									CLUTCH			
R. R. QTR. PANEL	<input checked="" type="checkbox"/>									BRAKES			
R. R. DOOR	<input checked="" type="checkbox"/>									BATTERY			
R. BODY SILL	<input checked="" type="checkbox"/>									STEERING			
R. F. DOOR	<input checked="" type="checkbox"/>									OTHER			
TOP	<input checked="" type="checkbox"/>												
										HUB CAPS			
										R. F. TIRE			
										R. R. TIRE			
										SPARE WHEEL			
										SPARE TIRE			
										TOOLS & JACK			
										L. R. TIRE			
										L. F. TIRE			
										FLOOR MATS			
										UPHOLSTERY			
										ANTIFREEZE	Yes	No	
										KEYS			
										OIL TYPE			
										GAS TYPE			
										OTHER			

USE OUTLINE OF CAR ON REVERSE SIDE TO DESCRIBE DAMAGES

Released in above condition except as noted:

Received in above condition except as noted:

I understand that shipment is subject to the terms and conditions of the Uniform Straight Bill of Lading as published in National Automobile Transporters Association Agency Circular 2K I.C.C. Number 215 and as thereof and supplements thereto. Carrier assumes no responsibility for the transportation of personal property.

Signed: _____
Date: _____

Signed: _____
Date: _____

Driver's Signature: _____

Driver's Signature: _____

Driver's Application No. _____

Contract No. _____

Other Instructions: DRIVER TO CHECK ALL LUBRICANTS AT EACH GAS STOP, OIL, ANTIFREEZE, TIRES, ETC.
SHOULD DRIVER HAVE ANY REPAIRS SEE SECTION #3-D OF DRIVERS AGREEMENT

CONSIGNEE TO PAY \$ _____ TO DRIVER WHEN VEHICLE IS DELIVERED IN SATISFACTORY CONDITION ☐ DENOTES COMPANY ISSUING BILL OF LADING

RELEASE PARTY

EXHIBIT A

INTERSTATE AUTO DELIVERY

DATE 8/15/74

CARRIER INVOICE NO.

INVOICE
TO

UCB/PETERSON

CON
SIG
NEE

INTERSTATE AUTO DELIVERY
1141 W. 20TH ST.
LOS ANGELES, CALIF.

213/746-0315

SHIPPER
ORIGIN

SANTA CLARA TOW
990 PARKER COURT
SANTA CLARA, CALIF.
408/243-6300

DESCRIPTION OF VEHICLE

Year 73 Make VW Model SEDAN Serial/Engine 1423809968 License 267 KBJ

Registered Owner QUENTON DILWORTH

Customer Ref. 207783

Due Date 10/12

Lien

STG

General Condition DRIVE A BE

heck (X) extra ☐ Radio ☐ Power brakes ☐ Power windows ☐ Air conditioning ☐ 3 speed trans. ☐ Stereo
quipment ☐ Heater ☐ Power steering ☐ Power seats ☐ Automatic trans. ☐ 4 speed trans. ☐ Mag. wheels

CONDITION REPORT: ☒ GOOD ☐ FAIR ☐ MISSING ☐ SCRATCH ☐ DENTED ☐ PITTED ☐ CRACKED

	G	S	D	P	GLASS	G	P	G	BRKN	G	F	X
F. FENDER	<input checked="" type="checkbox"/>											
RILL	<input checked="" type="checkbox"/>											
BUMPER	<input checked="" type="checkbox"/>											
OOD	<input checked="" type="checkbox"/>											
F. FENDER	<input checked="" type="checkbox"/>											
F. DOOR	<input checked="" type="checkbox"/>											
BODY SILL	<input checked="" type="checkbox"/>											
R. DOOR	<input checked="" type="checkbox"/>											
R. QTR. PANEL	<input checked="" type="checkbox"/>											
HECK LID	<input checked="" type="checkbox"/>											
BUMPER	<input checked="" type="checkbox"/>											
R. QTR. PANEL	<input checked="" type="checkbox"/>											
R. DOOR	<input checked="" type="checkbox"/>											
BODY SILL	<input checked="" type="checkbox"/>											
F. DOOR	<input checked="" type="checkbox"/>											
OP	<input checked="" type="checkbox"/>											
WINDSHIELD												
R. F. VENT												
R. F. DOOR												
R. R. DOOR												
REAR												
L. R. DOOR												
L. F. DOOR												
L. F. VENT												
ENGINE						<input checked="" type="checkbox"/>	G	F	POOR			
TRANSMISSION												
CLUTCH												
BRAKES												
BATTERY												
STEERING												
OTHER												
HUB CAPS												
R. F. TIRE												
R. R. TIRE												
SPARE WHEEL												
SPARE TIRE												
TOOLS & JACK												
L. R. TIRE												
L. F. TIRE												
FLOOR MATS												
UPHOLSTERY												
ANTIFREEZE										Yes	No	
KEYS												
OIL TYPE												
GAS TYPE												
OTHER												

USE OUTLINE OF CAR ON REVERSE SIDE TO DESCRIBE DAMAGES

Released in above condition except as noted:

Received in above condition except as noted:

understand that shipment is subject to the terms and conditions of the Uniform
rights Bill of Lading as published in National Automobile Transporters Associa-
Agency Circular 2K I.C.C. Number 235 reissues thereof and supplements
erate. Carrier assumes no responsibility for the transportation of personal property.

igned:

ate

river's Signature:

Signed:

(CONSIGNED OR CONSIGNEE'S AGENT)

Date

Time

Driver's Signature:

river's Application No.

Contract No.

ther Instructions: DRIVER TO CHECK ALL LUBRICANTS AT EACH GAS STOP, OIL, ANTIFREEZE, TIRES, ETC:
OULD DRIVER HAVE ANY REPAIRS SEE SECTION #3-D OF DRIVERS AGREEMENT

NSIGHT TO PAY \$

TO DRIVER WHEN VEHICLE IS DELIVERED IN SATISFACTORY CONDITION

☐ DENOTES COMPANY ISSUING BILL OF LADING

RELEASE PARTY

1423809968 B

WIDE AUTO TRANSPORTERS MC 135633 21/74 CARRIER INVOICE NO.		INVOICE TO First Security Bank Salt Lake City, Utah
LIVER TO: Blount Auto Transporters 10 So. State Street Salt Lake City, Utah 312-3103		SHIPPER ORIGIN Morris Landy Ford 1650 Park Street Alameda, California Attn: Jack Sullivan 523-2745

Make Ford Model SW Serial/Engine 107233 License 7 FDC 537																																																																																																																																																																																																																																																																																																																																																																																																																				
Owner Nichol Hedger	Customer Ref.																																																																																																																																																																																																																																																																																																																																																																																																																			
General Condition <input checked="" type="checkbox"/> Good <input type="checkbox"/> Fair <input type="checkbox"/> Missing <input type="checkbox"/> Scratch <input type="checkbox"/> Dented <input type="checkbox"/> Pitted <input type="checkbox"/> Cracked <input type="checkbox"/> Rust <input type="checkbox"/> Power brakes <input type="checkbox"/> Power windows <input type="checkbox"/> Air conditioning <input type="checkbox"/> 3 speed trans. <input type="checkbox"/> Stereo <input type="checkbox"/> Heater <input type="checkbox"/> Power steering <input type="checkbox"/> Power seats <input type="checkbox"/> Automatic trans. <input type="checkbox"/> 4 speed trans. <input type="checkbox"/> Mag. wheels																																																																																																																																																																																																																																																																																																																																																																																																																				
REPORT: <input checked="" type="checkbox"/> GOOD <input type="checkbox"/> F-FAIR <input type="checkbox"/> X MISSING <input type="checkbox"/> S-SCRATCH <input type="checkbox"/> D-DENTED <input type="checkbox"/> P-PITTED <input type="checkbox"/> C-CRACKED																																																																																																																																																																																																																																																																																																																																																																																																																				
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IF OF CAR ON REVERSE SIDE TO DESCRIBE DAMAGES
 above condition except as noted: _____
 Received in above condition except as noted: _____

Signed: _____ (CONSIGNEE OR CONSIGNEE'S AGENT)
 Date: _____ Time: _____
 Driver's Signature: _____

CONTRACT NO. _____
 DRIVER YOU CHECK ALL LUBRICANTS AT EACH GAS STOP, OIL, ANTIFREEZE, TIRES, ETC.
 NEVER HAVE ANY REPAIRS SEE SECTION #3-D OF DRIVERS AGREEMENT
 LATE FEES \$5.00 PER DAY
 NO LATE FEES IF DELIVERED WITHIN 150 MILES
 AT 100 MILES TO BE DELIVERED WHEN VEHICLE IS DELIVERED IN SATISFACTORY CONDITION. ☐ DENOTES COMPANY ISSUING BILL OF LADING

HOME OFFICE

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AAACON AUTO TRANSPORT, INC.,

Plaintiff,

-against-

Verified Complaint

JOHN BRUIN d/b/a INTERSTATE AUTO
DELIVERY and INTERSTATE AUTO
DELIVERY, INC.,

Defendants.

COMES NOW, Aaacon Auto Transport, Inc. (hereinafter
"Aaacon") and complains and alleges against defendants as follows:

AS AND FOR A FIRST CAUSE OF ACTION

FIRST: Plaintiff Aaacon is a New York corporation engaged in interstate commerce operating pursuant to Certificate of Authority MC-125808 issued by the Interstate Commerce Commission ("Commission") and maintains an office for doing business at 230 West 41st Street, New York City.

SECOND: Plaintiff is a common carrier engaged in interstate commerce and transports automobiles, in secondary movements in driveaway service, pursuant to authority granted to it by the Commission, between points in the United States.

THIRD: Defendant John Bruin is an individual, a resident of California, maintaining business offices at 1141 West 20th Street, Los Angeles, California and 1730 Geary Blvd., San Francisco, California.

FOURTH: Upon information and belief defendant Interstate Auto Delivery, Inc. is a California corporation with offices at 1730 Geary Blvd., San Francisco, California, operated and controlled by defendant John Bruin.

FIFTH: Jurisdiction and venue in this action are in this Court by reason of the provisions of the Judiciary Act 28 U.S. Code Sec. 1332 and the provisions of the agreement between the parties conferring in personam jurisdiction of this Court over the parties. The amount in controversy exceeds Ten Thousand Dollars (\$10,000).

SIXTH: On or about December 26, 1973 defendant John Bruin came to plaintiff's New York office at 230 West 41st Street, New York City, and in order to induce plaintiff to enter into an ^{prior} agreement with him, represented that defendant Bruin's/operations for Nationwide Auto Transporters, Inc. ("Nationwide") a competitor of plaintiff, were within the scope of the authority of Nationwide, and that the defendants John Bruin and Interstate Auto Delivery ("Interstate") had at all times complied with the requirements of the agreement between themselves and Nationwide; that the defendants John Bruin and Interstate had at all times transported vehicles in interstate commerce solely on the bills of lading of Nationwide within the scope of the authority of Nationwide. Defendant John Bruin further represented to Aaacon that he would at all times in the future operate within the authority of Aaacon and solely transport automobiles in interstate commerce on bills of lading issued by Aaacon.

SEVENTH: Defendant John Bruin knowingly and willfully made these representations, which he knew to be false, in order to induce Aaacon to enter into an agreement with defendant Bruin, to authorize him to transport vehicles on behalf of Aaacon.

EIGHTH: Plaintiff Aaacon relied on the aforementioned representations of defendant Bruin and entered into an agreement with him in New York to its detriment. A copy of said agreement is annexed hereto as Exhibit "A".

NINTH: Upon information and belief, defendants Bruin and Interstate, in concert with others, had transported vehicles while an agent of Nationwide, other than in accord with the authority of Nationwide granted by the Interstate Commerce Commission and other than solely on the bills of lading of Nationwide.

TENTH: Upon information and belief, after December 26, 1973, defendants Bruin and Interstate and others, acting in concert with them, continued this pattern of illegal transportation in violation of the agreement between defendant Bruin and plaintiff Aaacon, and without issuing Aaacon's bills of lading therefor, or accounting to Aaacon therefor.

ELEVENTH: Upon information and belief, defendants Bruin and Interstate, in concert with others, have systematically and continuously transported vehicles in interstate commerce without authority from the Commission.

TWELFTH: Plaintiff has been harmed by defendants' misrepresentations in the amount of Two Hundred Forty Five Thousand Dollars (\$245,000).

AS AND FOR A SECOND CAUSE OF ACTION

THIRTEENTH: Plaintiff repeats and realleges each and every allegation contained in Paragraphs One through Twelve as if fully set forth herein.

FOURTEENTH: Defendants have failed to report the foregoing transportation to plaintiff and have failed to remit revenues due and owing plaintiff on these and other transportations subject to the agreement between the parties.

FIFTEENTH: Defendants have failed to account to Aaacon for these transportations and have deprived Aaacon of its lawful revenues.

SIXTEENTH: As a result of the foregoing, plaintiff has been deprived of revenues and exposed to liabilities to which plaintiff is entitled to reimbursement from defendant in the amount of One Hundred Ninety Thousand Dollars (\$190,000).

WHEREFORE, Plaintiff respectfully requests the following relief:

a. That, during the pendency of this action, this Court enter a preliminary injunction enjoining the defendant, his agents, servants, employees and representatives from transporting vehicles in driveaway service in interstate commerce in violation of his agreement with plaintiff.

b. That this Court enter an order permanently enjoining defendant, his agents, servants, employees and representatives from transporting vehicles in driveaway service in interstate commerce without appropriate authority from the Commission.

c. That this Court award to plaintiff actual damages of Four Hundred Thirty Five Thousand Dollars (\$435,000) and punitive damages of Two Million Dollars (\$2,000,000).

d. That this Court require defendant to account to plaintiff for all sums due and owing plaintiff arising out of or relating to the agreement between the parties.

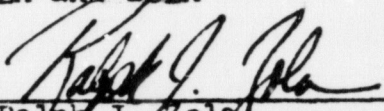
e. That this Court award plaintiff the costs and disbursements of this action and its attorneys fees and disbursements incurred in the prosecution of this action, and

f. Such further and additional relief as this Court
may find appropriate.

Respectfully submitted

ZOLA and ZOLA

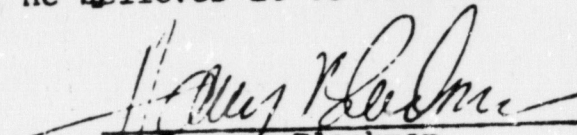
By


Ralph J. Zola
A Member of the Firm
228 West 41st Street
New York, New York 10036
Tel.: (212) 354-1444

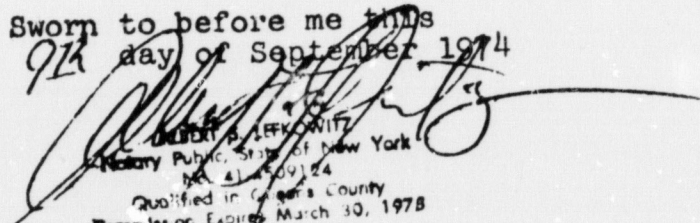
STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

HARVEY BLACKMAN, being duly sworn, deposes and says:

That he is the National General Manager of Aaacon Auto Transport, Inc., the plaintiff in this action, and that he has read the foregoing complaint and it is true to his own knowledge except as to matters therein stated to be alleged on information and belief and as to those matters, he believes it to be true.


Harvey Blackman

Sworn to before me this
9th day of September 1974


Notary Public, State of New York
No. 414504124
Qualified in Queens County
Commission Expires March 30, 1978

AAACON AUTO TRANSPORT, INC.

AGENCY AGREEMENT

THIS AGREEMENT, made this 26TH day of December
1973, AT NEW YORK, NEW YORK, by AAACON Auto Transport, Inc.
hereinafter called "AAACON" and JOHN BRVIN.

1629T Keeler Drive, GRAND HILLS Cal. 91344
(Street Address) (City and State)

an Individual, hereinafter called the "Agent",
(Individual, ~~Corporation~~, ~~Partnership~~)

W I T N E S S E T H:

WHEREAS, AAACON is engaged in business as a common carrier by motor vehicle, over irregular routes, of used passenger automobiles, in secondary movements, in driveaway service, between points in the United States, including Alaska and excluding Hawaii, subject to certain restrictions.

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained, it is hereby agreed between the parties hereto as follows:

1. Appointment of Agent. AAACON hereby appoints Agent as its agent at LOS ANGELES + SAN FRANCISCO, hereinafter called the "Agency City" for purposes hereinafter set forth and Agent hereby accepts such appointment subject to the terms and conditions hereinafter set forth.

2. Duties of Agent.

(a) Agent shall develop business for AAACON in the transportation of used automobiles in driveaway service in interstate commerce solely and only within the scope of AAACON's authority from the Interstate Commerce Commission. Agent has received a copy of said authority and understands the scope thereof. All orders for transportation of automobiles by AAACON accepted by the agent shall be solely and only within the scope of that authority. All orders for transportation of automobiles accepted by Agent for transportation within the scope of AAACON's said authority, shall be accepted solely and only as Agent for AAACON. Agent shall submit a completed revenue and insurance report to AAACON on forms provided by AAACON together with any and all sums due AAACON in connection therewith for Agent's business for each week beginning on Monday and ending on Sunday. Such reports shall be mailed no later than Tuesday of the week following the Sunday on which the business week ended.

(b) Agent shall maintain in the classified telephone directory in the Agency City at Agent's own expense, a suitable listing and an advertisement in such name as AAACON shall determine. This telephone number and listing shall be the property of AAACON. Agent shall do such other advertising in the name of AAACON as AAACON may require at Agent's expense.

(c) Agent shall maintain an office in the Agency City with such employees of Agent as Agent shall see fit, all at Agent's own expense, provided that such employees shall be of suitable number and ability to handle the business of AAACON.

(d) Agent shall enter into agreements with customers and enter into agreements with persons desiring to drive to various destinations to which said customers' automobiles are to be transported solely and only upon forms furnished by AAACON and upon no other terms and conditions.

(e) Agent shall issue Bills of Lading and freight bills of AAACON, exclusively on the serially numbered forms furnished to Agent by AAACON, to shippers of automobiles to be transported. A Bill of Lading and freight bill shall be prepared for each automobile transported and charges shall be assessed by Agent strictly in accordance with the tariffs of AAACON on file with the Interstate Commerce Commission. Any failure by Agent to so prepare a Bill of Lading and freight bill or to assess charges in accordance with such tariffs shall give AAACON the option of terminating this agreement immediately.

(f) Agent shall comply with all regulations and procedures as prescribed by AAACON from time to time relating to the operation of the business within the scope of the Agency created by this agreement including but not limited to reporting of any accidents in accordance with AAACON's instructions. Agent shall comply with all applicable regulations of the Interstate Commerce Commission, the Department of Transportation and all other agencies of the United States Government. Failure to comply with the requirements of this paragraph shall give AAACON the option of terminating this agreement immediately.

(g) Agent agrees that he will maintain the office of AAACON to be operated by him in a business-like manner, paying all bills on a current basis, and that such office will be open with personnel on the premises from at least 8:55 A.M. local time to 5:05 P.M. local time, Monday through Friday. Agent agrees that he will cooperate with other offices of AAACON from time to time as required to assist them respecting shipments which require assistance in the area in which Agent operates. Failure to comply with the requirements of this paragraph shall give AAACON the option of terminating this agreement immediately.

(h) AAACON shall furnish to Agent a list of AAACON's other Agents

and Offices throughout the United States and Agent shall cooperate with other AAACON Agents and Offices pursuant to procedures prescribed by AAACON. Agent agrees that it will not transact business with authorized agents of any other company or organization engaged in a business similar to AAACON's within the scope of AAACON's business.

3. Compensation of Agent. Agent shall receive as Agent's compensation for its services See Amendment. of the transportation revenue collected by Agent with respect to those shipments on which Agent receives an order for service from a shipper or his agent.

4. Insurance Premium on Car Shipments. Agent shall pay for all insurance premiums for each car shipment. The rate of these premiums shall be determined by AAACON from time to time. The payment of these insurance premiums shall be made each week under paragraph 2(c) hereof for all cars shipped that week.

5. Documents. AAACON shall furnish to Agent a supply of serially-numbered Bills of Lading, driver agreements and such other documents as AAACON may require in connection with Agent's operations. Agent shall use these documents exclusively in connection with the transportation of automobiles within the scope of AAACON's operating authority. All such documents, used or unused, shall remain the property of AAACON.

6. No Competition by Agent. Agent shall not engage in any transportation activity as principal, agent, employee or otherwise in competition with AAACON during any period in which this Agreement or any renewal thereof is in effect, or for one year after the termination of this Agreement or any renewal thereof, within the area serviced by Agent on behalf of AAACON, or within one hundred miles of the geographic area set forth in Paragraph 1 hereof, whichever distance shall be less.

As used herein, the "area serviced by Agent on behalf of AAACON" shall be any and all areas in which Agent shall have carried at any time listings or advertisements listing or advertising the services performed by him in connection with the business of AAACON in the Yellow Pages.

Agent shall provide or refer no drivers or customers with respect to the movement of any vehicle within the scope of AAACON's authority to third persons during such periods or in such areas.

Agent agrees that in the event of any violation of this Paragraph 6, AAACON may seek an injunction to prevent further violations and may seek liquidated damages in an amount equal to the sum set forth in Paragraph 14 hereof equaling that sum of money representing the final year's revenue which, if collected by the Agent, would allow Agent to renew this Agreement. Such liquidated damages are to be assessed in lieu of actual damages relat-

ing to the interruption and dislocation of AAACON's business, the amount of which is impossible to measure.

7. Limited Agency of Agent. Agent shall be the Agent of AAACON solely and only for the purpose of executing Bills of Lading and furnishing drivers in accordance with Agreements in form furnished by AAACON. Agent shall have no authority to enter into any other agreement on behalf of AAACON and shall incur no liability or expense on behalf of AAACON. Agent is an independent contractor and not an employee of AAACON.

8. Insurance. Agent shall carry, at its own expense, public liability and property damage insurance on Agent's premises covering Agent's operation as Agent for AAACON, with limits of at least \$100,000. for injury to one person, \$300,000. for injuries in any one accident and \$100,000. for property damage, naming AAACON as an additional assured. Agent shall also carry, at its own expense, workmen's compensation insurance. Agent agrees to submit to AAACON, annually, a certificate of the insurance companies showing the amount of insurance in force and the expiration date thereof.

9. Bond. Agent shall be bonded by a corporate surety company for Agent's faithful performance under this Agreement. The amount of that bond shall be \$50,000. and the premium shall be paid by AAACON.

10. Checking Account. Agent shall maintain, for Agent's use a separate checking account in the name of Agent, and shall deposit all revenues under this Agreement in that checking account. No other monies shall be deposited in that checking account.

11. Telephones. Agent agrees that any and all telephone numbers and accounts which Agent shall use in connection with the operation of the business of AAACON, whether or not contracted for by Agent or AAACON, and whether or not owned by Agent prior to the date hereof, and whether or not maintained upon the premises of Agent in or any other place, shall be and remain the sole property of AAACON. This paragraph shall apply, without limiting the generality of the foregoing, to each and every telephone number and account owned or used by the Agent with respect to any automobile transportation business at any time, whether or not such business was conducted under the name and style of AAACON AUTO TRANSPORT, INC., or under any other name or style of any nature whatsoever. Agent hereby grants permission to AAACON to remove the telephone numbers and accounts from the premises of Agent at any place which AAACON, in its sole discretion, may choose, or to make any disposition of such telephone numbers and accounts as to AAACON may appear necessary to carry out the intentions expressed herein.

In the event that Agent shall fail to permit the removal by AAACON of the telephone numbers and accounts in accordance herewith, Agent agrees

that AAACON may seek a mandatory injunction to accomplish such purpose and liquidated damages in an amount equal to the sum set forth in Paragraph 14 hereof equaling that sum of money representing the final year's revenue which, if collected by the Agent, would allow Agent to renew this Agreement. Such liquidated damages are to be assessed in lieu of actual damages relating to the interruption and dislocation of AAACON's business, the amount of which is impossible to measure and shall be in addition to any other damages hereunder.

12. Inspection of Agent's Records. Books of account or shipping documents and all financial records in connection with the Agency shall be kept in an orderly and business-like manner by Agent and shall be subject to inspection and audit by AAACON at its option during reasonable business hours.

13. Termination of Agreement. This Agreement may be terminated at any time by AAACON, at its option, by thirty (30) days written notice to the Agent in the event gross revenues of AAACON from traffic billed by Agent during the three (3) calendar months preceding the date of such notice of termination aggregate less than \$~~30,000.00~~. Without prejudice to AAACON's right to terminate this Agreement immediately as provided in sub-paragraphs (e), (f) and (g) of paragraph 2 hereinabove, in the event of breach of or default under this agreement by either party of any provision of this Agreement and the failure of such party to remedy such breach or default within thirty (30) days after written notice of such breach or default given by the other party, then the other party may terminate this Agreement forthwith. Agent agrees that AAACON holds the exclusive right to the use of the name "AAACON Auto Transport, Inc." and any privilege granted Agent hereunder to use that name shall cease with the termination of this Agreement, without any right or privilege accruing to Agent to use such name thereafter.

In the event of any termination of this Agreement, Agent agrees to discontinue the use of the name "AAACON Auto Transport, Inc.", and any name similar thereto and any other name under which Agent was conducting AAACON's business during the base term hereof or any renewal period and to return immediately to AAACON all Bills of Lading and other forms furnished Agent by AAACON. Agent expressly grants to AAACON permission to enter upon the premises of Agent in order to take possession of such documents as well as telephones and other equipment which is the property of AAACON.

In the event that Agent terminates this Agreement for any reason of any nature whatsoever, Agent agrees to give AAACON at least ninety (90) days notice of Agent's intention to terminate in writing.

14. Term of Agreement and Option to Renew. The base term of this Agreement shall be for a period of three (3) years from the date hereof. Subject to the approval of the parties hereto at the time of the hereinafter mentioned

renewal, and providing the obligations of Agent shall have been fully performed hereunder, in the event of the gross revenues of AAACON during the final twelve (12) months period of the base term from traffic billed by Agent shall exceed \$150,000.00, then Agent shall have the option exercisable by written notice at least three (3) months but not over six (6) months before the end of the base term of renewing this Agreement for three (3) additional years. This period shall be the renewal period.

15. Payment of Taxes. Agent shall be responsible for and specifically agrees to pay any and all Federal, State and local taxes arising out of or in connection with its operation as an Agent of AAACON including but not limited to any state and local franchise taxes, license fees, road use taxes, gasoline taxes and income taxes.

16. Termination for Violation of Agreement. Notwithstanding any other provision of this Agreement, and in addition to any rights which AAACON may have to terminate this Agreement under any other provisions hereof, AAACON shall have the option of immediately terminating this Agreement upon the following conditions:

(a) In the event that Agent shall violate any of the Rules and Regulations of any United States Government agency or shall act in a manner other than as permitted by the authority granted to AAACON by the U. S. Interstate Commerce Commission under AAACON Certificate of Public Convenience and Necessity, or AAACON's tariff, as filed with the U. S. Interstate Commerce Commission and amended from time to time;

(b) In the event that Agent shall ship, or be a party to the shipment of any vehicle other than pursuant to a Bill of Lading issued by AAACON, or in the event Agent shall fail to pay to AAACON any sums due and owing to AAACON with respect to such shipment, or the insurance charges in connection therewith, within the time prescribed in this Agreement.

(c) In the event that the Bills of Lading issued by AAACON and delivered to the Agent for use in connection with the shipment of automobiles shall be used by the Agent other than in their numbered sequences.

17. Agents' Duties With Respect to Claims.

(a) If Agent does not comply with company directives on the dispatch of vehicles from their location with respect to the checkout and signout of drivers, Agent shall be responsible for that vehicle in the event that it is lost or stolen.

(b) Agent shall not be covered by insurance in the event that there is a claim for damages made with the vehicle and neither a pink freight bill nor a Bill of Lading is signed by the registered owner, or the consignor.

(c) In the event that Agent is involved in a claim relating to the business of AAACON, all papers relating to that matter shall be forwarded immediately to the claims department in New York. Agent shall include all papers which are relevant to the subject.

(d) No Agent has the right to pay, agree to pay, or agree to settle a claim on a local basis, without first receiving approval of an officer of AAACON.

(e) In the event that Agent is involved in legal action, all documents in connection therewith, including all documents relating to the shipment, shall be mailed to the claims department in New York as soon as they are received. These documents shall have a cover sheet stating the time, method and type of service (how the legal document was given to Agent).

(f) All vehicles tendered to Agent for shipment must be stored in an off-the-street parking facility and, when the need arises, operated by a third party. If Agent stores autos in any other manner, he will be responsible for all loss and damages that result.

18. Fee Deposit. Agent has on the date hereof deposited the sum of \$ 2,000.00 . This sum shall be returned within 120 days to the Agent upon termination of this Agreement provided that all the conditions of the Agency Agreement have been fulfilled. Notwithstanding any rights which AAACON may have to retain a part or all of such fee deposit for violations of this Agreement, and in addition to any other rights which AAACON may have hereunder, in the event of any violations of the terms and provisions of Paragraph 16, then AAACON may retain the entire sum of the fee deposit as partial liquidated damages for the violations of the provisions of such Paragraph 16.

19. Failure to Enforce Not a Waiver. Failure of AAACON to enforce any of the provisions of this Agreement shall not be construed to be a waiver nor to affect the right of AAACON thereafter to enforce such provisions.

20. Not Assignable. This Agreement shall not be sold, assigned or transferred by Agent, either in whole or in part, without the prior written consent of AAACON.

21. Bankruptcy or Insolvency. If Agent shall be adjudged a bankrupt, make an assignment for the benefit of creditors, either voluntary or involuntarily, or if receivership or insolvency proceedings shall be commenced against Agent, this Agreement shall terminate.

22. No Oral Representations. This Agreement contains the full agreement between the parties hereto, and the parties shall not be bound by any oral representations not set forth in this Agreement.

23. Interpretation of Agreement. The validity, interpretation, and performance of this Agreement shall be determined under the laws of the State of New York, and any controversy arising hereunder shall be settled by arbitration under the rules of the American Arbitration Association in the City, County and State of New York. The Agent agrees to service of process anywhere in the United States by certified mail.

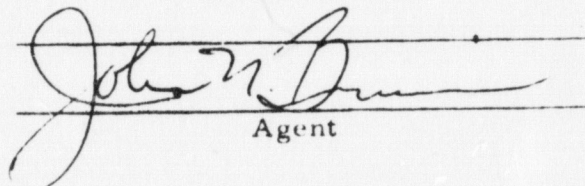
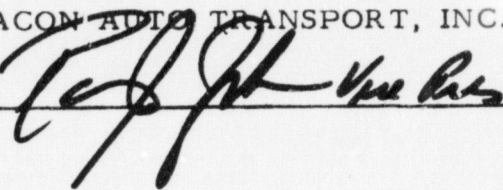
24. Paragraph Headings. The paragraph headings herein have been used for convenience only and shall have no bearing upon the interpretation of this Agreement.

25. Notices. Any and all notices required to be given by Agent to AAACON shall be valid and effective only if sent by registered mail, return receipt requested, to AAACON's principal office in New York City.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

AAACON AUTO TRANSPORT, INC.

By


Agent

AMENDMENT TO AGREEMENT BETWEEN JOHN N. BRUIN and AAACON AUTO
TRANSPORT, INC. DATED DECEMBER 26, 1973

1) Section 3 of the agreement between JOHN N. BRUIN and AAACON AUTO TRANSPORT, INC. dated December 26, 1973 is hereby amended as follows:

"3. Compensation of Agent. Agent shall receive as Agent's compensation for its services 80% of the transportation revenue collected by Agent with respect to those shipments on which Agent receives an order for service from a shipper or his agent, less \$25.00 per vehicle transported. Agent shall remit to the company 20% of the transportation revenue collected by the Agent indicated above plus \$25.00 per vehicle. The total sum shall be remitted along with Agent's report to the home office on a weekly basis."

2) A Rule 27 post card shall be mailed to the home office by the Agent on the day that the Agent receives an order for transportation of any vehicle, or on the day the Agent places an order for the transportation of any vehicle with another office of the company.

3) The parties hereto agree that in the event that Aaacon Auto Transport, Inc. is adjudged to have violated its agreement with Nationwide Auto Transporters, Inc. by executing the annexed agreement, Aaacon Auto Transport, Inc. may terminate

the agreement immediately as though a violation upon the part of John N. Bruin had occurred, as provided in Paragraph 2 of the agreement of December 26, 1973.

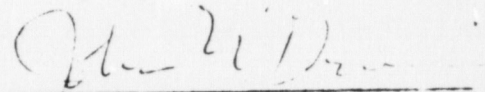
4) The representations of John N. Bruin contained in his affidavit of December 26, 1973, annexed hereto and made a part hereof, are relied upon by Aaacon Auto Transport, Inc. In the event that said representations are determined to be false in any respect, John N. Bruin shall indemnify Aaacon Auto Transport, Inc. and hold it harmless for any losses therefrom.

5) Agent shall cause to be kept in proper order all log books required by Federal authorities and shall further remit copies thereof to Aaacon Auto Transport, Inc. on a weekly basis with regard to all operations requiring same.

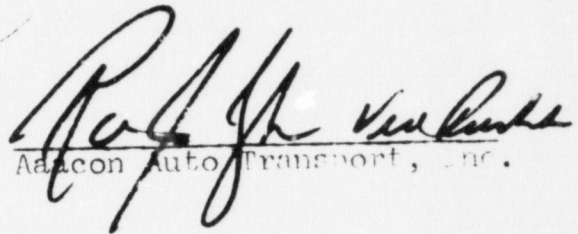
6) John N. Bruin shall execute any and all documents necessary to transfer forthwith to Aaacon Auto Transport, Inc. all telephone numbers used by him and by any corporation, proprietorship, partnership or other business enterprise with which he is affiliated as officer, shareholder, employee or agent or other affiliation directly or indirectly within the State of California in connection with the operation of business transporting automobiles.

7) Except as amended herein, the Agency Agreement of December 26, 1973 between the parties shall be and remain

in all respects in full force and effect.



John N. Bruin



Ralph J. VanLunde
Aarcon Auto Transport, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

x

AAACON AUTO TRANSPORT, INC.,

Plaintiff,

74 Civ. 4084-DBB

-and-

MOVING AFFIDAVIT

JOHN BRUIN d/b/a INTERSTATE AUTO
DELIVERY, INC., etc.

Defendants.

x

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

RALPH J. ZOLA, being duly sworn, deposes and says:

1. I am Vice President of Aaacon Auto Transport, Inc., plaintiff in the above-entitled action (hereinafter "Aaacon").

2. This affidavit is submitted in support of Aaacon's application for a Preliminary Injunction and in opposition to defendants' cross-motion to dismiss and for a change of venue.

3. I am fully familiar with all aspects of this matter, having personally participated in the preliminary negotiations relating to the signing of the agency agreement between Aaacon and the defendant, John Bruin (hereinafter "Bruin"), which agreement was executed the 26th day of December, 1973. A copy of said agreement is annexed to the Order to Show Cause herein and is designated as Exhibit "A". It will be noted that this agreement was signed by John Bruin and by me as Vice President of Aaacon.

4. I have carefully read the affidavit dated October 16, 1974, sworn to by Harvey Blackman, Aaacon's National Operations Manager. All of the statements contained in Mr. Blackman's affidavit, particularly those relating to the negotiations with

Mr. Bruin in which Mr. Blackman and I jointly participated, are factually true. Every single statement in Mr. Blackman's affidavit referring to promises made by Mr. Bruin to Mr. Blackman and me occurred in my presence in New York and I hereby reaffirm the fact that these promises, later proved to be fraudulent, actually were made.

5. In addition to the fraud and misrepresentations referred to in Mr. Blackman's affidavit, Mr. Bruin also perpetrated frauds upon Aaacon during the term of the agreement which I subsequently discovered during an audit.

6. Prior to the month of August 1974, we had no suspicion that Bruin was engaged in any activities carefully designed and calculated to violate his agreement with Aaacon and to deprive our company of revenues. Until that month, we were merely concerned with the relatively low amount of revenue being forwarded to Aaacon by Bruin from his two offices in Los Angeles and San Francisco.

7. During the month of August 1974, I was on a business trip for Aaacon and visited, among other cities, Los Angeles and San Francisco. At that time, I made a routine audit inspection of the premises maintained by Mr. Bruin in Los Angeles. In the course of the audit, I made the accidental discovery that Bruin was engaged in a fraud which can be described as "double book-keeping" in the course of which he maintained one set of records for shipments made on Aaacon Bills of Lading and another set of records for shipments of automobiles made in his own name in violation of the agreement between him and Aaacon.

8. When I arrived in San Francisco, I made the same inspection at the Bruin premises in that city. The San Francisco

Office was managed by John Bruin's brother, Roy Bruin. When I confronted Roy Bruin with the evidence of fraudulent conduct, double bookkeeping, etc., he admitted it and added "I was just following John's orders". In other words, the defendant, John Bruin, not only engaged in fraudulent and surreptitious activities in the Los Angeles Office but, at his direction and instructions, his brother operated in the same fraudulent manner in the San Francisco Office to Aaacon's detriment.

9. A flagrant example occurred when Bruin contacted two of Aaacon's agents, Mr. Barney Daly of Chester, Pennsylvania, and Mr. Alfred Rappeport of New York City in an attempt to induce them to transport automobiles in violation of their agency agreements with Aaacon. Both Mr. Daly and Mr. Rappeport refused to breach their agreement with Aaacon. If the trial is held in this Court, rather than on the west coast, both Mr. Daly and Mr. Rappeport will testify under oath to the foregoing.

10. Aaacon has many records in its possession in New York City which clearly demonstrate the fraudulent scheme and plot by Bruin to deprive Aaacon of revenue, to deprive Aaacon of its status in the field and to misrepresent to Aaacon's customers our liability for damage to vehicles and for insurance coverage for third parties.

11. As but one example of the records now in Aaacon's possession in New York City, annexed hereto as Exhibit "A", is a photocopy of the transport papers concerning a shipment occurring on August 14, 1974, originating in Denver and terminating in California. This transport was effected through one John Scheall by defendant Bruin and his brother, Roy Bruin. The covering letter from John Scheall clearly proves that the automobile was not being shipped on Aaacon's Bill of Lading, but rather on "Insured Paper".

"Insured" refers to an interstate motor carrier which is no longer even engaged in the business of transporting cars in driveaway service. Mr. Bruin worked for Insured a number of years ago and it is evident that he retained documents with the Insured name on them for the express purpose of continuing illegal shipments after terminating his agency with Insured.

12. Your deponent has contacted Mr. Allen Herman, President of Nationwide Auto Transporters, Inc., John Scheall's employer, at Port Lee, New Jersey. Mr. Herman stated that the shipment referred to immediately above was neither authorized by, nor reported to, Nationwide. It apparently constituted a collusive act of fraud by Mr. Bruin and others with the intent of depriving Aaacon of revenues. Mr. Herman further indicated that he would be available at a trial in New York City to so testify on Aaacon's behalf.

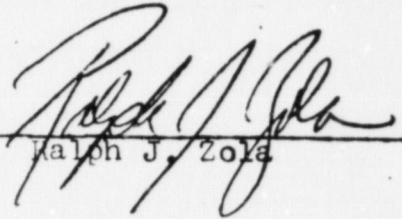
13. In addition, Mr. Herman has made available to Aaacon a recent letter sent to Nationwide by Mr. Don Landis, dated September 20, 1974. Mr. Landis, Nationwide's Seattle Agent, admits that he colluded with Bruin in connection with Bruin's transportation of vehicles without Aaacon's Bills of Lading for a number of months. (See Herman affidavit of October 16, 1974.) Mr. Landis advised Mr. Herman that several automobiles were moved "on no paper". This phrase means that cars were transported without any bills of lading whatsoever and without insurance certificates having been issued by any motor carrier. Mr. Herman has further indicated that he would testify on these matters as well at a New York City trial.

14. As to the reference by attorneys for Bruin concerning the "substance" of settlement conversations had between that firm and myself, I respectfully note that reporting such conversations to the Court is highly improper.

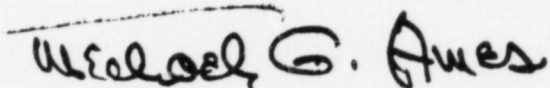
15. Even more significantly, said reportage is totally misleading and inaccurate. I did not state "I want to make an example of John Bruin". When asked by opposing counsel whether or not Aaacon would drop its claim for punitive damages, I replied that punitive damages are awarded to make an example of people who are engaged in fraudulent conduct. I added that Aaacon believes John Bruin has acted fraudulently in the instant case and that we believe punitive or exemplary damages are appropriate and proper. (This was in response to a suggestion by counsel for John Bruin that the matter be settled merely by the payment of the sums which Bruin had wrongfully taken and failed to report to Aaacon.)

16. I wish to conclude by emphasizing that the telephone numbers which Bruin used in both the Los Angeles and San Francisco areas are Aaacon's property, according to the agreement between the parties. In the Complaint, we requested that he be enjoined from using our assets. These assets include, not only Aaacon's bills of lading still in his possession, but the telephone numbers as well.

WHEREFORE, your deponent respectfully requests that
Aascon's motion for a preliminary injunction be granted in en-
tirety and that Bruin's cross-motion for a change of venue be
decided in entirety.


Ralph J. Zola

Sworn to before me this
16th day of October 1974


Michael G. Ames

MICHAEL G. AMES
Notary Public, State of New York
No. 31-0060655
Qualified in New York County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
AAACON AUTO TRANSPORT, INC.,

Plaintiff,

74 Civ. 4084-DBB

-and-

MOVING AFFIDAVIT

JOHN BRUIN d/b/a/ INTERSTATE AUTO
DELIVERY, INC., etc.

Defendants.

-----X
STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

HARVEY BLACKMAN, being duly sworn, deposes and says:

1. I am National Operations Manager of Aaacon Auto Transport, Inc. (hereinafter "Aaacon"). I am fully familiar with all aspects of the dispute between Aaacon and defendant John Bruin (hereinafter "Bruin"). I personally participated in all of the negotiations leading to the execution of the agency agreement between the parties as well as in the dispute between Aaacon and Bruin that followed.

2. This affidavit is submitted in support of Aaacon's application for a preliminary injunction and in opposition to Bruin's application to dismiss and for a change in venue.

3. During the month of December 1973, Bruin came to our office at 230 West 41st Street, New York, New York, for the purpose of exploring the possibility of being appointed our second agent in the Los Angeles and San Francisco metropolitan areas. These negotiations were engaged in by me and Ralph J. Zola on behalf of Aaacon. The talks culminated in the execution of the agency agreement dated December 26, 1973, a true copy of which is annexed as Exhibit "A" to the complaint herein.

4. We emphasized that our Los Angeles and San Francisco offices were among the highest revenue producers and that we were appointing second agents in these cities only because of the "institutional" customers he would bring to Aaacon, as described below.

5. In the course of the negotiations, we asked Bruin why he had been terminated as agent on the West Coast for our competitor, Nationwide Auto Transporters, Inc. (hereinafter "Nationwide"). He told Mr. Zola and me the reason was that Nationwide had decided against direct local billing of customers by its agents and that billing would be conducted by the Nationwide headquarters. Bruin further advised us that he could not go along with this basic change in policy and, consequently, his agency was terminated. As set forth below, we recently learned that the reason for the termination of his contract with Nationwide was of a far more serious nature since it involved fraudulent conduct on his part.

6. During the negotiations, which lasted for two days, Bruin emphasized that his main source of business was "institutional" as distinguished from individual owners. This term is used in our industry to denote banks, etc. which engage the services of an auto driveaway company like Aaacon to transport repossessed cars in interstate commerce.

7. Bruin further emphasized his close and exclusive contacts with key officials in four major California banks, including Bank of America, who, he assured us, he would deal with as an Aaacon agent.

8. Chiefly in reliance upon this important promise by Bruin, Aaacon signed the agency agreement with him. We stressed

the necessity of his billing these institutional customers on Aaacon's billing paper and, of course, transporting all vehicles on the issuance of Aaacon's bills of lading. This is also contained in the agreement itself.

9. We also pointed out to Bruin that his institutional business was vital to Aaacon since we already had two unusually active agents in both Los Angeles and San Francisco. In other words, we made it clear that we were engaging him as a second agent in each city solely because of his assurance that he could and would serve institutional customers as an agent of Aaacon.

10. We subsequently learned during an audit by Ralph Zola of Bruin's operation in August 1974, that on many occasions Bruin did business as Interstate Auto Delivery (hereinafter "Interstate") and was making many institutional shipments in his own name (Interstate) in a flagrant violation of paragraph 5. of the agency agreement.

11. Furthermore, although required to take orders on freight bill-order forms furnished by Aaacon and containing its name, he obliterated Aaacon's name and replaced it with the name of Interstate Auto Delivery or the names of other carriers. Thus, not only did his customers think that they were dealing directly with him and deprive Aaacon of the benefit of the good-will to be derived had it conducted the transportation, but he also billed them directly on Interstate paper, never reporting either the shipments or the income to Aaacon, thus cheating it out of substantial amounts of money.

12. We have been advised by Allen Herman, President of Nationwide Auto Transporters, Inc., that he had terminated the contract with Bruin (see paragraph 4, supra) because of identical fraudulent conduct by Bruin as Nationwide's agent. Bruin shipped

automobiles on his own fictional bills of lading, without proper insurance, did not report the shipments to Nationwide and failed to forward revenues to Nationwide, according to Mr. Herman, who assures us he will testify at a trial -- if held in New York City.

13. I cannot emphasize too strongly that Bruin engaged in an enormous amount of business with institutional customers in Aaacon's name. Aaacon has been advised by these institutional customers that they would deal directly with Aaacon in the future were John Bruin "out of the picture". If Bruin is permitted to violate his agreement with Aaacon by dealing with these institutional customers for a period of one year, the impression already made by Aaacon upon them as a reliable and substantial interstate motor carrier will gradually fade away. In other words, unless Bruin is now enjoined, at the expiration of one year, Aaacon's value to these specialized customers will be considerably blurred in their minds, if not completely obliterated.

14. I respectfully direct the Court's attention to Paragraph 4 of the accompanying affidavit of Mr. Allan Herman, sworn to October 16, 1974, as well as Exhibit "B" annexed thereto. We deem highly significant the letter dated September 20, 1974 to Mr. Herman, President of Nationwide Transporters, Inc., by Mr. Don Landis, Nationwide's Seattle agent. We emphasize that, in said letter, Mr. Landis admits having moved vehicles in interstate commerce in concert with John Bruin, without bills of lading of any interstate carrier and without the safeguards required by law.

Sworn to before me this
22nd day of October, 1974

Richard S. Kaplan

RICHARD S. KAPLAN
NOTARY PUBLIC, STATE OF NEW YORK
No. 7100 (00)
Qualified in New York County
Term Expires March 30, 1976

Harvey Blackman
Harvey Blackman

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AAACON AUTO TRANSPORT, INC.,

74 Civ. 4084-DBB

Plaintiff,

AFFIDAVIT

-and-

JOHN BRUIN d/b/a INTERSTATE AUTO DELIVERY,
INC., etc.,

Defendants.

STATE OF NEW JERSEY)
COUNTY OF BERGEN)

ss.: ."

ALLAN HERNAN, being duly sworn, deposes and says:

1. I am a resident of the State of New Jersey, and am President of Nationwide Auto Transporters, Inc. Our main office is at 2175 Lemoine Avenue, Fort Lee, New Jersey.

2. Annexed hereto as Exhibit "A" is a copy of a transport order of a vehicle in interstate commerce. I am advised that this order was effected by John Bruin on August 12, 1974, for the Bank of America, using the name "Nationwide Auto Transporters."

3. At the time in question, and for nine months prior thereto, John Bruin was not an agent of Nationwide Auto Transporters and had no authority or right to use or to represent authority from our company to effect the transport in interstate commerce.

4. Annexed hereto as Exhibit "B" is a letter dated September 20, 1974 which I received from Don Landis, the Nationwide agent in Seattle, in which he admits having moved vehicles in interstate commerce in concert with John Bruin, without the bill of lading of a carrier and without the safeguards required by

the Interstate Commerce Act.

/s/
Allan Herman

Sworn to before me this
16th day of October, 1974

15/
NEDDIE HERMAN
NOTARY PUBLIC OF NEW JERSEY
My Commission expires October 5, 1977

1130 W. 20th Street
Los Angeles, Calif. 90007
Phone: (213) 746-0315



INTERSTATE AUTO DELIVERY

AGENT FOR

NATIONWIDE AUTO TRANSPORTERS

1130 West 20th Street
Los Angeles, Calif. 90007

AADA #20297 8/12

MC-135639

ORDER TO RELEASE NO. 4886

This will serve as your authority to release the following
described vehicle which you have in your possession.

Handwritten: 318/222-9389

Car located at: AUTO RECOVER OF LA., 341 S. FIELD DR, SHREVEPORT, LA. 318/222-1131

Deliver to: HAYWARD MOTORS, 25501 MISSION BLD., HAYWARD, CALIF.

73 FORD LTD S/W

3J76M194225

421 JHS

Year

Make

Model

Motor or Serial No.

License

Registered Owner

RUBY JACKSON

Account No.

0361 08982 71 501

Due Date

8/17 ACTUAL (8/18 IS ACTUAL BUT DEADLINE IS CLOSED)

\$2

General Condition

GOOD

A/C SOMETHING WRONG.

Company

CROCKER

Branch

HAYWARD

Authorized By

CHUCK ROOF

Date of Order

8/12/74

73 FORD LTD S/W CROCKER

BOB M

CROCKER

8/17 ACTUAL

EXHIBIT "A-1"

DELIVERY 1/12/74 CARRIER INVOICE NO. INVOICE TO CROCKER/HAYWARD/ROOF

HAYWARD MOTORS 101 MISSION BLVD. HAYWARD, CALIF. SHIPPER ORIGIN MOBS/DANIELS AUTO RECOVERY OF LOUISIANA SHREVEPORT, LA. 318/222-9389

DESCRIPTION OF VEHICLE

Year 73 Make FORD Model LTD S/W Serial/Engine 30764194225 License 421 JHS

Received by Owner JACOB JACOB Customer Ref. 0361 08988 71 501

Date 1/17/74 Lien \$2 DAY General Condition GOOD

Check extra: ☐ Radio ☐ Power brakes ☐ Power windows ☐ Air conditioning ☐ 3 speed trans. ☐ Stereo ☐ Heater ☐ Power steering ☐ Power seats ☐ Automatic trans. ☐ 4 speed trans. ☐ Mag. wheels

CONDITION REPORT: ☒ GOOD ☐ F-FAIR ☐ X-MISSING ☐ S-SCRATCH ☐ D-DENTED ☐ P-PITTED ☐ C-CRACKED

	G	S	D	P	GLASS	G	P	C	BRKN		G	F	X
R. F. FENDER										HUB CAPS			
WHEEL										R. F. TIRE			
F. F. FENDER										R. R. TIRE			
HOOD										SPARE WHEEL			
L. F. FENDER										SPARE TIRE			
L. F. DOOR										TOOLS & JACK			
L. R. DOOR										L. R. TIRE			
L. R. DOOR										L. F. TIRE			
L. F. DOOR										FLOOR MATS			
L. F. DOOR PANEL										UPHOLSTERY			
REAR													
L. R. DOOR													
L. F. DOOR													
L. F. VENT													
ENGINE													
TRANSMISSION													
CLUTCH													
BRAKES													
BATTERY													
STEERING													
OTHER													

USE OUTLINE OF CAR ON REVERSE SIDE TO DESCRIBE DAMAGES

Received in above condition except as noted: HAYWARD MOTORS

Signed: [Signature] (CONSIGNEE OR CONSIGNEE'S AGENT)

Date: [Date] Time: [Time]

Driver's Signature: [Signature]

Driver's Application No. Contract No.

Other Instructions: DRIVER TO CHECK ALL LUBRICANTS AT EACH GAS STOP, OIL, ANTIFREEZE, TIRES, ETC. SHOULD DRIVER HAVE ANY REPAIRS SEE SECTION 4.3.1 OF DRIVERS AGREEMENT

CO. AGENT TO PAY \$ TO DRIVER WHEN VEHICLE IS DELIVERED IN SATISFACTORY CONDITION

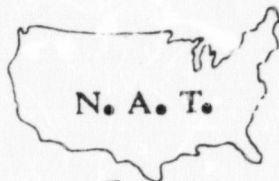
DETERMINES COMPANY ASSUMES RISK OF LOSS

EXHIBIT "A-2"

Nationwide

Auto

Transporters, Inc.



324 RIVER ROAD • PUYALLUP, WASH. 98317

206/R48 2337

ICC MC 135633

SEPT. 20, 1974

MR. AL HERMAN
NATIONWIDE AUTO TRANSPORTERS
2175 LENOIRE AVENUE
FORT LEE, NEW JERSEY

DEAR AL,

PER TELECON WITH YOU REGARDING AAAACON, JOHN BRUIN AND MYSELF, I WOULD LIKE TO FURTHER EXPLAIN THIS SITUATION. AS YOU KNOW WHEN JOHN BRUIN WAS CANCELLED, THE SEATTLE OFFICE WOULD HAVE LOST A LOT OF BUSINESS BECAUSE OF THE MANY REPOSSESSED CARS FROM CALIFORNIA THAT ARE FOUND IN THIS AREA. IN ORDER NOT TO LOSE THIS BUSINESS, I SET ABOUT TO FIND A WAY THAT TO KEEP IT THAT WOULD NOT BE ILLEGAL. AFTER A FEW MONTHS OF SOME MOVES ON AAAACON PAPER AND SOME ON NATIONWIDE PAPER AND A FEW ON NO PAPER, I TOLD JOHN THAT ALL MOVES, BOTH HIS ORDERS AND MINE WOULD HAVE TO BE ON NATIONWIDE PAPER. ALTHOUGH HE DIDN'T LIKE THE IDEA OF HELPING THE NATIONWIDE HOME OFFICE MAKE MONEY, HE AGREED AND ALL MOVES SINCE THEN HAVE BEEN DONE THIS WAY. AS YOU CAN SEE, WE PROFITTED AND AAAACON DIDN'T.

IN ORDER TO EXPLAIN THE PROCEDURE FURTHER IN DETAIL, IT WAS DONE THIS WAY. THE ORDERS FROM HIS OFFICES IN LOS ANGELES AND SAN FRANCISCO ARE PHONED TO ME AT SEATTLE THE SAME AS ANY CUSTOMER PLACES AN ORDER. THE ORDER IS TYPED UP ON NATIONWIDE PAPER AND THE CAR IS MOVED. JOHN PAYS THE BILLING AND NATIONWIDE HOME OFFICE IS SENT ITS SHARE. THE PROCEDURE IS THE SAME AS IF JOHN WERE A MOVING COMPANY OR LEASING COMPANY GIVING US ORDERS TO MOVE CARS.

THE ORDERS ORIGINATING FROM MY CUSTOMERS ARE TYPED UP ON NATIONWIDE PAPER AND SINCE I HAVE MANY DRIVERS THAT ARE GOING TO CALIFORNIA AND WANT A RETURN CAR, I FORWARD THE B/L TO JOHN OR ROY AND THEY HAVE THE CAR READY FOR MY DRIVER WHEN HE WALKS IN TO THEIR OFFICE.

AS I SEE IT, EVERYBODY IS HAPPY EXCEPT AAAACON WHEN THEY FOUND OUT ABOUT IT. HOWEVER SINCE HE IS NO LONGER THEIR AGENT THIS SHOULD NOW POSE NO PROBLEM.

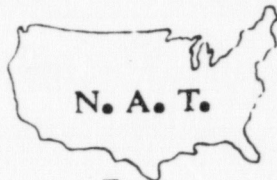
NOW OF COURSE IT IS YOUR PEROGATIVE TO TELL ME IF THIS PROCEDURE IS ALRIGHT. IF NOT, REMEMBER THAT WE ARE PRIMARILY IN THIS BUSINESS TO MAKE MONEY, SO TRY AND SHOW ME HOW OR WHAT NEEDS TO BE CHANGED SO THAT WE STILL CAN MOVE JOHN'S CARS.

BY NOW YOU ARE PROBABLY THINKING THAT WE CAN GET ALL OF JOHN'S BUSINESS BY FORCING HIM OUT OF BUSINESS AND GOING AFTER HIS CUSTOMERS, BUT KEEP IN MIND THAT THE PEOPLE AT BANK OF AMERICA AND OTHERS ARE HIS PERSONAL FRIENDS AND HE CAN INFLUENCE THEM AGAINST USING US.

AUTOMOBILE TRANSPORTATION THE N.A.T. WAY. QUALITY MAKES THE DIFFERENCE

EXHIBIT "B-1"

Nationwide
Auto



324 RIVER ROAD • PUYALLUP, WASH. 98117
206/848 2337

Transporters, Inc. ICC MC 135633

PAGE 2

I BELIEVE THAT IF WE WORK WITH HIM AS I HAVE IT IS MORE PROFITABLE AND THE LONG TERM GAIN IS GREATER THAN COMPETING AGAINST HIM.

LET ME KNOW WHAT YOUR THOUGHTS ARE ON ALL OF THIS AND IF YOU THINK IT IS A LITTLE SHADY BUT WITHIN THE LAW THEN FORGET I EVEN WROTE THIS AND THROUGH THE LETTER AWAY.

YOURS FOR MORE BUSINESS ANYWAY WE
CAN GET IT,

DON LANDIS

AUTOMOBILE TRANSPORTATION THE N.A.T. WAY: QUALITY MAKES THE DIFFERENCE

EXHIBIT

"B-2"

RUSSELL & SCHUREMAN
1545 Wilshire Boulevard
Los Angeles, California 90017
(213) 483-4700

Attorneys for Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AAACON AUTO TRANSPORT, INC.,

Plaintiff,

Against

JOHN BRUIN, d/b/a INTERSTATE
AUTO DELIVERY and INTERSTATE
AUTO DELIVERY, INC.,

Defendants.

CIVIL ACTION NO. 74 CIV 4084 DBB

MOTION TO DISMISS

[IMPROPER VENUE], AND MOTION FOR
CHANGE OF VENUE, AND NOTICE OF
MOTION

The defendant John Bruin moves the Court as follows:

1. To dismiss the action on the ground that it is in the wrong district because:
 - a. The jurisdiction of this Court is invoked on a ground in addition to that of diversity in that the plaintiff complains of, and seeks relief from, alleged violations of the Interstate Commerce Act; and
 - b. The defendant is an individual and is not licensed to do business or doing business in the Southern District of New York, all of which more clearly appears in the affidavits of John Bruin attached hereto as Exhibit A; and
 - c. The proper venue for an action which seeks relief from alleged violations of the Interstate Commerce Act is as more fully set out in Section 222 (b) (2) [49 U.S.C. 322 (b) (2)] of the Interstate Commerce Act, or in Title 28, Section 1391 (b) United

States Code, all of which more clearly appears in the points and authorities filed herein.

2. To transfer the within action to the Central District of California for the convenience of witnesses and to avoid undue hardship on the defendant.

Dated: October 4, 1974

Respectfully submitted,

RUSSELL & SCHUREMAN

By Christopher Ashworth

Attorneys for Defendant John Bruin

NOTICE OF MOTION

TO: Zola & Zola, attorneys for plaintiff AAACON AUTO
TRANSPORT, INC.

Please take notice that the undersigned will bring the above motions on for hearing before this Court in Room 706 of the United States Courthouse, Foley Square, in the City, County and State of New York at 9:30 o'clock in the forenoon on the 15th day of October, 1974, or as soon thereafter as counsel can be heard.

RUSSELL & SCHUREMAN

By Christopher Ashworth

Attorneys for Defendant John Bruin
1545 Wilshire Boulevard, Suite 606
Los Angeles, California 90017

Phone: (213) 483-4700

RUSSELL & SCHUREMAN
1545 Wilshire Boulevard
Los Angeles, California 90017
(213) 483-4700

Attorneys for Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AAACON AUTO TRANSPORT, INC.,

Plaintiff,

Against

JOHN BRUIN, d/b/a/ INTERSTATE
AUTO DELIVERY and INTERSTATE
AUTO DELIVERY, INC.,

Defendants.

CIVIL ACTION NO. 74 CIV 4084 DBB

AFFIDAVIT OF JOHN BRUIN

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

John Bruin, being duly sworn, deposes and says:

1. From and after September 19, 1974, I have not individually, or doing business as Interstate Auto Delivery, moved, or caused to be moved any automobile or any other vehicle, in driveaway or truckaway service into or out of the State of New York.

2. I have no intention of moving or causing to be moved any automobile or other vehicle in driveaway or truckaway service across any state line unless I am employed by a person or corporation who is lawfully entitled to so operate, or until I can procure suitable authority from the Interstate Commerce Commission.

3. All of my books and records regarding transportation of

automobiles are in California.

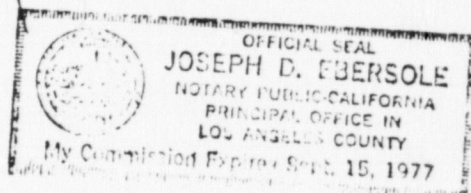
4. The great majority of traffic which I have participated in moving in interstate commerce, moved from points and places in the United States on the one hand, to California on the other.

Dated: Oct. 4, 1974

John Bruin
JOHN BRUIN

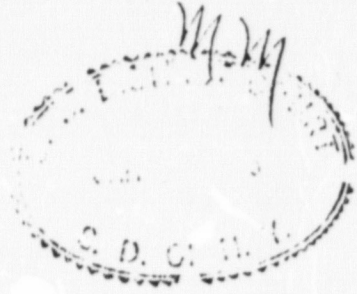
Subscribed and sworn to before me, a notary public in and for said County and State this 4th day of October, 1974.

Joseph J. Ebersole



~~10-10-74~~

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UNITED STATES DISTRICT COURT—
SOUTHERN DISTRICT OF NEW YORK

-----X
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AACON AUTO TRANSPORT, INC., :
:
Plaintiff, :
:
vs. :
:
JOHN BRUIN, :
:
Defendant. :
:
-----X

74 Civ 40⁸⁴~~48~~

November 11, 1974
9:30 a.m.

Before: HON. DUDLEY B. BONSAI,
District Judge

APPEARANCES

MICHAEL G. AMES, ESQ.
Attorney for Plaintiff.

CHRISTOPHER ASHWORTH, ESQ.
Attorney for Defendant.

1 gt 2

2 MR. AMES: My name is Ames, one of the attorneys
3 for plaintiff, your Honor.

4 Before I start what I hope will be a relatively
5 brief argument, I simply want to point out to the Court that
6 about three minutes ago -- well, let me put it this way,
7 nearly three weeks ago, we served papers upon counsel for the
8 defendant, and I received nothing since until about three
9 minutes ago. I haven't even read it yet.

10 THE COURT: Okay.

11 MR. AMES: With the permission of the Court, I
12 would appreciate a few days to look at it and answer it.

13 THE COURT: Any objection to that?

14 MR. ASHWORTH: Yes, I do, your Honor.

15 The affidavit on file is not absolutely essential
16 to either of our cases this morning.

17 THE COURT: Did you just give it to him three
18 minutes ago?

19 MR. ASHWORTH: Yes, your Honor.

20 THE COURT: I will give you a couple of days.

21 MR. AMES: Thank you. Wednesday at five p.m.?

22 MR. ASHWORTH: Then I will withdraw that affidavit.

23 THE COURT: All right. You can do that.

24 Give it back to him.

25 MR. AMES: I have no objection, unless it has been

1 gt 3

2 filed --

3 THE COURT: He said it hasn't been filed.

4 MR. ASHWORTH: I have taken it down to the clerk's
5 office, but I will withdraw it.

6 THE COURT: All right. You withdraw it and make a
7 note of that, that it is withdrawn, and I won't look at it.

8 Let us proceed with the argument.

9 MR. AMES: All right, your Honor.

10 I know that the Court was interested in submission.
11 I merely wanted to highlight several points.

12 THE COURT: My problem, I think, with this. Mr.
13 Ames, this seems to me a contractual dispute and I would like
14 you to focus on why you think you need an injunction here.

15 The agreement is terminated, isn't it?

16 MR. ASHWORTH: Yes, your Honor, it has.

17 THE COURT: The agreement is terminated and it is
18 a contractual dispute. I think there were some allegations
19 here that the defendant is violating I.C.C. rules.

20 No?

21 MR. AMES: You are correct in the first place, the
22 agreement has been terminated. There were some borderline
23 things, but we concede the termination of the agreement.

24 THE COURT: Why do you want this equitable relief
25 then?

1 gt 4

2 MR. AMES: All right. I will concentrate on that,
3 your Honor.

4 Opposing counsel in his napers --

5 THE COURT: Don't tell me what opposing counsel
6 has, tell me why you want equitable relief. That is what I
7 want to know.

8 MR. AMES: This is truly a vital point, I am not on
9 a tangent.

10 He claims, he contends, that we are suing under an
11 alleged violation of the interstate commerce act 322 which
12 constitutes violations promulgated by the Interstate Commerce
13 Commission.

14 Now, this is not so.

15 THE COURT: I am not worried about that. I don't
16 give a hoot whether it is so or not.

17 Why do you need equitable relief at this point
18 where the agreement has been terminated?

19 MR. AMES: Well, it is precisely because the agree-
20 ment has been terminated that we do need this.

21 THE COURT: Why?

22 MR. AMES: The agreement by its very terms -- well,
23 all right -- by its very terms states that the defendant --
24 well, there is a restrictive covenant for one year, your
25 Honor in both the cities of Los Angeles and San Francisco

1 gt 5

2 for a certain geographical area.

3 THE COURT: That they won't compete, is that right?
4 Is that right? A restrictive covenant not to compete for
5 one year?

6 MR. ASHWORTH: That's correct.

7 MR. AMES: There is no contention on our part, and
8 I think --

9 THE COURT: Don't tell me whether there is no
10 contention, I want to get your contention.

11 MR. AMES: Very good.

12 These are unique and very special services. This
13 is not an ordinary employer - employee contract or a prin-
14 cipal - agent contract.

15 We believe that we have adequately established in
16 our papers that there be two -- Aacon being a motor state
17 carrier does business in two areas, one with so called casual
18 customers, those who walk in from a street and want a car
19 transported to another point, and the other, and this is the
20 vital point and why we want the injunction even though the
21 agreement has terminated, the institutional --

22 THE COURT: Wait a minute. Is it you want equitable
23 relief here to enforce the agreement not to compete for one
24 year? Is that what you want?

25 MR. AMES: Yes, and I even go beyond that. I have

1 gt 6

2 made an offer which has been rejected to limit that restric-
3 tion only to the institutional customers in which or with
4 which the defendant has peculiar and very, very rewarding
5 contacts.

6 We have agreed to waive any rights to the re-
7 strictive covenant, the terms of it, regarding the casual
8 customer in the entire state of California.

9 I mentioned that because he emphasizes that we
10 are hurting his client and attempting to put him out of
11 business. We are not.

12 THE COURT: All right. But that is the scope of
13 your equitable relief?

14 MR. AMES: Yes. And what it boils down to, if I
15 may have another sentence or two on that, is this:

16 The defendant is already, and we can establish that
17 at a hearing, your Honor, has already and is now contacting
18 institutional customers, which we don't have contact with.
19 We went into business with him because of that.

20 Aacon is a large company and is not worried about
21 casual customers. But on the institutional basis, which is
22 extremely unique, it is our contention --

23 THE COURT: What is an institutional customer?

24 MR. AMES: All right. That is what I tried to say
25 before.

1 gt 7

2 A casual customer is an individual registered owner
3 of an automobile --

4 THE COURT: I want to know what an institutional
5 customer is.

6 MR. AMES: I am distinguishing. We have two.

7 An institutional customer is a bank or an insurance
8 company, or another large organization that repossesses
9 automobiles and gives them to Aacon or another licensed
10 motor carrier for the purpose of transferring it or shipping
11 it, rather, in interstate commerce.

12 We do not have those contacts. This is why we
13 want the injunction. We didn't have them before. We went
14 into business with him -- we have an office in Los Angeles,
15 we have one in San Francisco. We went into business with
16 him only because of these contacts.

17 If he is permitted to continue with pursuing his
18 contacts, at the end of a year, your Honor, any contact that
19 Aacon would have or any knowledge that they would have of
20 Aacon's name would be cold.

21 THE COURT: Wait a minute. You say at the end of
22 a year. I am trying to straighten this out.

23 What is the limitation on competition? How long
24 does it run?

25 MR. AMES: One year in the contract.

1 gt 8

2 THE COURT: Let us not talk about after a year.
3 You are talking about the year.

4 MR. AMES: I am sorry, then I phrased it wrong.
5 By the end of the year, any knowledge that they will have of
6 Aacon will be totaled and that is why we need an injunction
7 at this time so that we can contact them ourselves without
8 being in competition with a former agent of ours.

2 9 THE COURT: All right.

10 MR. AMES: That is the essence of our request.

11 THE COURT: What do you say about this?

12 MR. ASHWORTH: Your Honor, the institutional cus-
13 tomers are, indeed, banks and the principal thrust of this
14 business is returning repossessed, stolen and embezzled auto-
15 mobiles to automobile dealers. Their return to an automobile
16 dealer is outside the authority of Aacon. They are not
17 allowed to deliver to automobile dealers. It is outside the
18 scope of their certificate of public convenience and
19 necessity.

20 Secondly, with respect to counsel's argument, I
21 would simply like to refer the Court to I think it is the
22 last paragraph of the brief which the plaintiff has filed in
23 reply, and they note here, and I will quote, "they, institution-
24 al customers, have indicated to employees of Aacon that
25 they would use Bruin in transporting vehicles independent of

1 gt 9

2 Aacon."

3 The unspoken major premise in that statement is
4 Mr. Bruin has gone ahead and hypnotized the companies.

5 Mr. Bruin isn't terribly interested in competing
6 with Aacon as a practical matter, the business he wants is
7 repossessed, embezzled and stolen automobiles to automobile
8 dealers. There may be an incidental or occasional return to
9 a bank's own vehicle lot, but that is an extremely rare
10 circumstance and that is mostly a matter of accomodation.
11 The bulk of the traffic goes to automobile dealers.

12 This point was raised, fortunately, prior to this
13 now withdrawn affidavit. I mentioned it on page five of my
14 points on authorities dated October 4, 1974 which are already
15 on file here supporting the motion for a transfer of venue.

16 The two issues kind of tie in.

17 A lot of witnesses we are going to need are going
18 to be automobile dealers. I realize we are not at that
19 point yet. But I did raise the point that the automobile
20 dealer delivery is the thrust of this whole basis and it is
21 something Aacon is not allowed to be in.

22 THE COURT: Okay. Now let us get back to the point
23 he makes.

24 MR. AMES: May I deny that, your Honor?

25 THE COURT: Wait a minute. I assume you deny it.

1 gt 10

2 The point is this agreement is terminated. You agree with
3 that?

4 MR. AMES: Oh, yes.

5 THE COURT: And there is a covenant not to compete
6 which I take it is for one year. That is correct?

7 MR. ASHWORTH: Yes. Not to compete within their
8 authority.

9 THE COURT: Let us start off with not to compete.
10 Is Bruin competing with Aacon in any way?

11 MR. ASHWORTH: To my knowledge, the only business
12 he wants to be in now is returning stuff to automobile dealers,
13 and to that extent he won't compete with them.

14 I think he may want to continue to occasionally
15 deliver a car right back to a bank. It would be so incidental
16 as to not harm Aacon to the extent that an injunction should
17 lie.

18 That is a competitive issue, I think, but it is of
19 so little significance to Aacon in terms of revenue that I
20 don't think an injunction should lie on that basis. The only
21 importance it has to Bruin is that a bank wants him to bring
22 a car to a bank rather than a dealer, that is a matter of an
23 accommodation that he will do occasionally.

24 THE COURT: What other competition do you say be-
25 sides what he said?

1 gt 11

2 MR. AMES: Your Honor, this is of so little signifi-
3 cance that Mr. Ashworth has made two trips from California.
4 He is pooh-poohing something which is not pooh-poohable if
5 I may be permitted.

6 This is the essence --

7 THE COURT: What is the competition you are worried
8 about at the moment?

9 MR. AMES: Mr. Ashworth --

10 THE COURT: Don;t tell me about that. What is the
11 competition you are concerned about?

12 MR. AMES: We are concerned with this precisely:
13 Bruin goes to a bank where he hasn't hypnotized
14 credit managers, out where he has --

15 THE COURT: He can't help but have contacts. I
16 guess we all have contacts.

17 MR. AMES: He has exclusive and unique contacts in
18 a very highly specialized field, your Honor, and this is not
19 a matter of, oh, well, incidentally one car or something of
20 the sort. If it were so, there would be no objection to an
21 injunction on that particular point, particularly since we
22 don't care about the casual customers. He can go ahead all
23 he wants throughout the entire state of California and the
24 whole country. But with these casual customers, he has
25 developed over the years, very vital contacts, which will

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provide business --

THE COURT: But you are all rationalizing because you say he has been around California for a long time and we are in New York, unfortunately, so I have no knowledge about that.

MR. AMES: We have an office in California, two offices in California which are much larger than Mr. Bruin and they don't have a single contact in the institutional field. It is an extremely unique and specialized field in interstate motor carriers. Whereas we get one car at a time, he will get 30, 40, 50 automobiles at a time which Aacon should be getting in view of the contract, the reason that we entered into this agreement, the only reason we entered into the agreement.

Now, your Honor, just one other thing. There has been reference made to automobile dealers and this is outside Aacon's authority.

Actually, Aacon is operating well within the authority authenticated by the Interstate Commerce Commission. I don't want to bore the Court with details now, but we are doing nothing illegal, I guarantee that. And I respectfully request that the Court set this down for a hearing to determine --

THE COURT: Who is going to testify at this hearing?

1 gt 13

2 All these people in California? What are you going to do,
3 bring them all here?

4 MR. AMES: This is why I really would like three
5 days. While he has technically withdrawn this affidavit, he
6 has made reference --

7 THE COURT: Three days for what?

8 I think what I am going to do, gentlemen, on this
9 thing, I think I am going to deny a preliminary injunction
10 without prejudice. I think I am going to grant the motion
11 for a change of venue to California, because it seems to me
12 if there has been any violation of this clause precluding
13 competition for one year, the testimony is going to be out
14 there, and I don't quite see why we ought to bring a lot of
15 Californians to New York to testify about that.

16 MR. AMES: May I point out the violation?

17 THE COURT: No. It seems to me perfectly sensible.

18 MR. AMES: But the violations have not been confined
19 to California.

20 THE COURT: All right. But California is where
21 this fellow is in business, that is conceded.

22 MR. AMES: But that is not the test. Under the
23 rules of the Interstate Commerce Commission --

24 THE COURT: I know, but the Interstate Commerce
25 Commission isn't even here.

1 gt 14

2 MR. AMES: That is because we are not proceeding
3 under 322 and they didn't intervene.

4 THE COURT: I don't know why it is, but the Inter-
5 state Commerce Commission is not here and I am going to deny--

6 MR. AMES: They are proceeding against Mr. Bruin
7 on their own.

8 THE COURT: I am going to grant the transfer of
9 venue and you can settle an order on that basis. Okay?

10 MR. ASHWORTH: Thank you, your Honor.

11 THE COURT: Okay.

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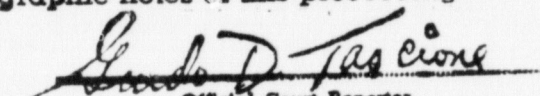
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I (We) hereby certify that the foregoing
is a true and accurate transcript to the best
of my (our) skill and ability from my (our)
stenographic notes of this proceeding.


Official Court Reporter
U. S. District Court

STATE OF NEW YORK)
: SS.
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 24 day of Feb, 1975 deponent served the within affidavit upon Russell + Schuman

attorney(s) for Appellee

in this action, at 1545 Mulshire Blvd.
Los Angeles, Calif.

the address(es) designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.


ROBERT BAILEY

Sworn to before me, this
day of Feb, 1975.

William Bailey
WILLIAM BAILEY

Notary Public, State of New York
No. 43-0132945

Qualified in Richmond County
Commission Expires March 30, 1976